

TWELFTH DIVISION

[CA–G.R. CR-HC No. 05399, March 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NAPOLEON BENSURTO, JR. Y BOLOHABO, ACCUSED-APPELLANT.**

D E C I S I O N

DICDICAN, J.:

The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case^[1]. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witness was telling the truth^[2].

Since the private complainant in this rape case is a minor, her real name and the names of her immediate relatives are withheld and, instead, fictitious initials are used pursuant to Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act", and Republic Act No. 9262, also known as the "Anti-Violence Against Women and Their Children Act of 2004".^[3]

This is an appeal from the Joint Decision^[5] rendered by Judge Arturo Clemente B. Revil, Presiding Judge of Branch 48 of the Regional Trial Court of the Fifth Judicial Region in Masbate City ("trial court"), on November 28, 2011 in Criminal Cases Nos. 10225-26 convicting herein accused-appellant Napoleon Bensurto, Jr. ("accused-appellant") of the crime of rape punishable under paragraph 1 of Article 266-A of the Revised Penal Code in relation to Republic Act No. 7610.

The two Informations^[5] read as follows:

Crim. Case No. 10225

"That sometime in the month of February, 1999 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his 9-year old daughter, "AAA", against her will.

"CONTRARY TO LAW."

Crim. Case No. 10226

"That sometime in the month of June 2000 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his 9-year old daughter, "AAA", against her will.

"CONTRARY TO LAW."

On July 29, 2004, upon being arraigned of the crime of rape on two counts, the accused-appellant entered a plea of not guilty thereto^[6]. Subsequently, a pre-trial was conducted. Then trial on the merits ensued thereafter.

The prosecution adduced the testimonies of the following witnesses: (1) Dr. Napoleon Villasis ("Dr. Villasis"), the Chief of Mandaon Medicare Community Hospital who examined the victim; (2) Edna Romano ("Edna"), a midwife at the Masbate Rural Health Center who assisted the victim during the examination conducted by Dr. Villasis; (3) "BBB", the mother of "AAA"; and (4) the private complainant, "AAA" herself.

For the defense, the accused-appellant adduced in evidence his testimony as well as those of "CCC" and "DDD", the alleged biological father and mother of the victim. The victim "AAA" was likewise presented by the defense as a hostile witness.

Based on the record of the case, the prosecution's recital of facts is summarized as follows:

Private complainant "AAA" was born on July 10, 1991^[7]. According to her birth certificate, her parents are "BBB" (mother) and the accused-appellant (father). "AAA", however, testified that BBB and the accused-appellant are not her biological parents, as she was only adopted by them when she was very young.

Sometime in February 1999, "AAA", who was then only nine (9) years old, was left alone by her mother in their house, together with her father, herein accused-appellant.

While she was sleeping in her room, her father, (the accused-appellant) entered thereat with a rope in his hand. She was awakened by the presence of her father who proceeded to tie her feet. The accused-appellant then pulled the victim's underwear to her feet and immediately laid on top of her. Subsequently, the accused-appellant undressed himself and thereafter forced his penis into the victim's vagina. After the accused-appellant satisfied his carnal desires, he threatened the victim not to tell anyone about the incident or else he would kill her and her mother.

For fear of her life as well as of her mother's safety, "AAA" never told anyone about what was done to her by the accused-appellant. However, the incident was repeated sometime in June 2000.

After the accused-appellant ordered their househelper to go home, he instructed the victim to sleep in his room. Left alone with only her father as companion, she was forced to accede to her father's demand. While in the accused-appellant's room, the latter pulled down the underwear of "AAA" and again sexually abused her despite her pleas. Helpless in such state, all that "AAA" could do was to cry. The accused-

appellant again told her not to tell anyone under the threat of death upon her and her mother.

The private complainant was able to relate the incident to her mother, the accused-appellant's wife, only in November 2000.

Together with her mother, "AAA" went to Edna Romano, the rural health midwife at Cabitan, Mandaon, Masbate to seek for assistance. Edna Romano accompanied "BBB" and "AAA" to the Mandaon Medicare Community Hospital. According to Edna, the victim told her that she had been sexually molested by her father several times.

On November 15, 2000, "AAA" was examined by Dr. Napoleon Villasis, the Chief of Mandaon Medicare Community Hospital.

Based on the examination conducted upon "AAA", Dr. Villasis found the following injury:

"Hymenal tears, old, at 10 o'clock position."^[8]

At the time when the rape charges were filed against the accused-appellant, he was already incarcerated at the Bureau of Jail Management and Penology in Mandaon, Masbate but for a different crime which was qualified theft .

To exculpate himself from liability, the accused-appellant offered denial, alibi and ill motive as his defenses. He denied raping the private complainant. He likewise testified that "AAA" was not his daughter.

Contrary to "AAA's" allegations, the accused-appellant averred that all the accusations against him were mere fabrications of his wife, "BBB", who only forced "AAA" to file the two criminal cases and testify against him. Since "AAA" was allegedly afraid of her mother, she purportedly concocted these stories against the accused-appellant to send the latter to jail. Furthermore, the accused-appellant narrated that, since he already knew about the illicit affairs of "BBB" with Relino Retudo, "BBB" was only trying to escape from him for fear that he would kill her together with her paramour.

"CCC" and "DDD" both testified that they are the biological parents of "AAA". "BBB" allegedly borrowed "AAA" from them when the latter was only three or four months old. "DDD" also testified that she was the one who processed the registration of the birth of "AAA".

In a sudden turn of events, more than seven years after she testified in open court for the prosecution, "AAA" retracted her previous testimony that she was raped by her father, the accused-appellant. Testifying for the defense, "AAA" narrated that she was not raped by her adoptive father, herein accused-appellant. According to "AAA", she was merely being dictated by "BBB" to fabricate the rape charges against the accused-appellant so as to allow "BBB" to live freely together with her paramour, Relino Retudo.

On November 28, 2011, the court *a quo* rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds, accused Napoleon Bensurto y Bolohabo GUILTY of:

1. Qualified Rape in Criminal Case No. 10225, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay "AAA" P75,000.00 as moral damages and P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;
2. Qualified Rape in Criminal Case No. 10226, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay "AAA" P75,000.00 as moral damages and P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;

"The period of detention of accused Napoleon Bensurto, Jr., y Bolohabo shall be

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"SO ORDERED."

Notwithstanding the recantation of "AAA", the RTC gave credence to her earlier testimony wherein she clearly narrated how the accused-appellant raped her.

Aggrieved by the foregoing judgment of conviction, herein accused-appellant interposed the instant appeal raising as lone error the following act purportedly committed by the trial court, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

In sum, the primordial issue brought before this Court for resolution is whether the court *a quo* erred in convicting herein accused-appellant beyond reasonable doubt of the crime of rape on two counts against him.

After a careful and thorough review of the facts, law and issues of this case, we sustain the accused-appellant's conviction.

Rape is a serious transgression with severe consequences for both the accused and the complainant.^[9]

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.^[10] Rape is committed when the accused has carnal knowledge of the victim by force or intimidation and without consent.^[11]

In reviewing rape cases, courts are guided by three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the accused.^[12]